

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MSC.SOFTWARE CORPORATION,

Plaintiff(s),

CASE NUMBER: 07-12807

HONORABLE VICTORIA A. ROBERTS

v.

**ALTAIR ENGINEERING, INC., MARC
KLINGER, ANDREA PERTOSA, STEPHAN
KOERNER, TOM RIEDEMAN, RAJIV RAMPALLI
MARK KRUEGER, and MICHAEL HOFFMAN,**

Defendant(s).

**ORDER ADOPTING SPECIAL MASTER LEE A. HOLLAAR'S
REPORT AND RECOMMENDATION**

On November 13, 2008, the Court entered an "Order Adopting in Part Special Master Hollaar's Report and Recommendation." (Doc. #229). The Order required Altair to "arrange with the Special master [a] visit [to] the site or sites having the MotionSolve[/MotionAuto] source code repository and development twiki to confirm that the copies produced to MSC represent all the information as they are kept in the usual course of business[.]"

On December 20, 2008, Special Master Hollaar informed Altair and MSC via e-mail that Altair's site inspection will occur on January 23, 2009. The e-mail said:

Since a primary reason for this site visit is to restore confidence in what was produced by Altair in discovery with respect to the source code repository and development twiki, I would be interesting[sic] in hearing from MSC what concerns it and its experts might have. Please get me that information by January 16, 2009.

MSC sent Special Master Hollaar three e-mails on January 16, 2009. The e-

mails expressed MSC's concerns that: (1) the "yabb bulletin board" was not produced; (2) Altair has development notes in a separate file from the twiki database; (3) MotionSolve 7.0 was not imported into Perforce in its entirety; and (4) the "bug fixes" that were provided to Dr. McGrath, Mr. Stackpole, and Mr. Zeidman were produced so that importation of those files is a laborious process. If the updating process cannot be automated, MSC requested the production of a new, updated Perforce database with every "bug fix."

In an Order dated January 23, 2009, the Court construed MSC's four concerns as a discovery problem addressed to Special Master Hollaar. The Court gave Altair until January 26, 2009 to provide Special Master Hollaar a response. If MSC's concerns were not resolved, Special Master Hollaar was required to make a recommendation to the Court regarding whether Altair should be required to produce the information MSC requested.

On February 2, 2009, Special Master Hollaar submitted a "Report and Recommendation Regarding MSC's Discovery Requests of January 21, 2009." (Doc. #269). Pursuant to the Court's Orders dated November 13, 2008 and January 23, 2009, the parties had 10 days to object to Special Master Hollaar's recommendations. See Docs. #230 and #267. Because the Court has not received objections from either party within the time frame provided, the Court adopts Special Master Hollaar's recommendations:

- (1) MSC's concern that Altair did not produce the "yabb bulletin board" is **MOOT**. Altair previously provided MSC the information it used to produce the "yabb bulletin board";
- (2) While MSC's discovery cut-off date was February 13, 2009, it may depose

an Altair developer regarding whether there are development notes outside of the MotionSolve source code repository or development twiki (if MSC did not do so before its discovery cut-off date). In the alternative, if no development notes exist outside of the source code repository or development twiki, an Altair developer may provide MSC a sworn affidavit attesting to that fact;

- (3) If it has not already done so, Altair must provide copies of the MotionSolve 7.0 source code repository data to Special Master Hollaar, MSC's experts, and MSC's outside counsel on or before **February 24, 2009**;
- (4) Altair need not produce a new version of the repository for MSC's experts and outside counsel before it releases a test or beta version of MotionSolve.

IT IS ORDERED.

s/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: February 19, 2009

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on February 19, 2009.

s/Linda Vertriest

Deputy Clerk